



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

Ref: 8ENF-L

CERTIFIED MAIL:

RETURN RECEIPT REQUESTED

Thomas D. Shanor, President
Thorofare Resources, Inc.-
Little Laramie Field,
Parkinson Tank Battery
P.O. Box 472
Thermopolis, WY 82443

Re: Complaint and Notice of
Opportunity for Hearing,
Docket No. **CWA-08-2006-0047**

Dear Mr. Shanor:

Enclosed is an administrative Complaint seeking penalties for violation by Thorofare Resources, Inc. ("Respondent") of certain requirements under the Clean Water Act ("CWA"), as amended by the Oil Pollution Act of 1990 ("OPA"), and associated implementing regulations.

Complaint and Notice of Opportunity for Hearing

Respondent is hereby served with a Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") issued under the authority of Section 311(B)(6)(B)(i) of the CWA, 33 U.S.C. Section 1321(b)(6)(B)(i). Enclosed with this Complaint are the Consolidated Rules of Practice and EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act", which are referenced in the Complaint.

The U.S. Environmental Protection Agency ("EPA") alleges in the Complaint that Respondent failed to comply with the oil pollution prevention requirements set forth in Section 311(b)(6)(A) of the CWA, 33 U.S.C. Section 1321(b)(6)(A), and 40 C.F.R. Sections 112.3, 112.5, 112.7, and 112.9. These provisions require, among other things, that Respondent: (i) prepare a Spill Prevention, Control, and Countermeasure Plan ("SPCC Plan"), (ii) prepare an adequate SPCC Plan, and (iii) adequately implement an SPCC Plan, for its facility; and place secondary containment around (i) loading/unloading operations, and (ii) aboveground piping, 55-gallon drums, and separation and treating facility installations, at its facility.



Printed on Recycled Paper

By law, Respondent has the right to request a hearing regarding the matters set forth in this Complaint. Respondent is encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If Respondent does not respond to this Complaint within thirty (30) days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its Answer, Respondent may request a hearing. It has the right to be represented by an attorney at any stage of these proceedings.

Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. Respondent may wish to be represented by counsel during any settlement conference. EPA encourages all parties against whom it files a complaint such as this to pursue the possibility of settlement. Any such settlement shall be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. The signature of a representative of Respondent on a Consent Agreement shall constitute a waiver of Respondent's right to request a hearing on any matter to which it has stipulated in the Consent Agreement.

A request for an informal conference does not extend the thirty-day period during which Respondent must submit its written Answer and request for hearing. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing.

EPA Contact

If Respondent has any legal questions or would like to discuss the possibility of settlement, please contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6926.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). SBREFA does not eliminate responsibility to comply with the CWA, nor does it create any new rights or defenses under law. A SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses is also enclosed with this letter. In addition, we are enclosing a copy of the EPA Supplemental Environmental Projects Policy.

EPA urges Respondent's prompt attention to these matters.

Sincerely,

SIGNED

Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

SIGNED

David J. Janik,
Supervisory Enforcement Attorney
Office of Enforcement, Compliance,
and Environmental Justice

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act"
4. SBREFA Information Sheet
5. EPA Supplemental Environmental Projects Policy

cc w/ Enclosure 1:

Donna Inman, 8ENF-UFO
Jessie Goldfarb, 8ENF-L

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	
)	
Thorofare Resources, Inc.-)	DOCKET NO.CWA-08-2006-0047
Little Laramie Field,)	
Parkinson Tank Battery)	COMPLAINT AND NOTICE OF
P.O. Box 472)	OPPORTUNITY FOR HEARING
Thermopolis, WY 82443)	
)	
Respondent.)	

STATUTORY AUTHORITY

This civil administrative Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990 ("OPA"). The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

1. Respondent is Thorofare Resources, Inc. ("Respondent").
2. At all times relevant to this action, Respondent was a corporation organized under the laws of the State of Wyoming.

3. At all times relevant to this action, Respondent was a "person" as defined by Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

4. At all times relevant to this action, Respondent owned and operated the Little Laramie Field, Parkinson Tank Battery located in NW/4 SW/4 Section 4, T. 16N., R. 75W., in Albany County, Wyoming (the "facility").

5. At all times relevant to this action, the facility, which was the central tank battery for Respondent's production of crude oil at Little Laramie Field, included, but was not limited to: a bolted steel 1,000-barrel oil storage tank; two 500-barrel welded steel oil storage tanks; a 210-barrel welded steel oil storage tank; a heater-treater; and a gas separator, with a total oil storage capacity of 92,820 gallons.

6. Crude oil is "oil" as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

7. At all times relevant to this action, Respondent was engaged in producing, gathering, storing, processing, transferring, distributing, using, or consuming oil or oil products at the facility.

8. At all times relevant to this action, Respondent was an "owner and operator" of an "onshore facility" as defined by Section 311(a)(6) and (10) of the CWA, 33 U.S.C. § 1321(a)(6) and (10).

9. At all times relevant to this action, the facility was a "non-transportation-related" onshore facility as defined by 40 C.F.R. Section 112.2.

10. Drainage from the facility could flow approximately 300 feet north of the facility into Sand Creek, which flows into Alsop Ditch, which flows into Browns Creek, a tributary of the Little Laramie River. The Little Laramie River is a tributary of the Laramie River. The Laramie River is a tributary of the North Platte River.

11. Sand Creek, Alsop Ditch, Browns Creek, the Little Laramie River, the Laramie River, and the North Platte River are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. Section 110.1.

12. Section 311(j)(1)(c) of the CWA, 33 U.S.C. § 1321(j)(1)(c), states that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil...from...onshore facilities..., and to contain such discharges...."

13. EPA promulgated the "Oil Pollution Prevention" regulations, set forth at 40 C.F.R. Part 112. 40 C.F.R. Section 112.1(b) states that Part 112:

applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines....

14. The facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by

Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. Section 110.1) or its adjoining shorelines.

15. The facility is subject to the "Oil Pollution Prevention" requirements of 40 C.F.R. Part 112, pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and its implementing regulations.

16. 40 C.F.R. Section 112.3 requires the owner or operator of an onshore facility to prepare a Spill Prevention, Control, and Countermeasure Plan ("SPCC Plan"), in writing, and in accordance with Section 112.7, and any other applicable section of Part 112, including, but not limited to, Sections 112.3, 112.5 and 112.9.

17. Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), states that any owner, operator, or person in charge of any onshore facility from which oil is discharged in violation of paragraph (3) of that Section, or who fails who fails or refuses to comply with any regulation issued under subsection (j) of that Section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by the Administrator.

18. On or about June 8, 2005, Paul Peronard, an EPA On-Scene Coordinator ("OSC"), together with EPA contractor Jerry Goedert; Pedro Ramirez, Jr., Environmental Contaminant Specialist with the United States Fish and Wildlife Service; Brian Lovett, Inspection/Compliance Supervisor with the Wyoming Department of Environmental Quality; and Craig Eggerman, Senior Environmental Analyst with the Wyoming Oil and Gas Conservation Commission, conducted a joint inspection of Respondent's facility to determine, inter alia, compliance with the CWA and its implementing regulations.

19. During the inspection referenced in Paragraph 18, above, the OSC found that Respondent had failed to prepare and implement an SPCC Plan for the facility, in violation of 40 C.F.R. Sections 112.3, 112.5, 112.7, and 112.9.

20. During the inspection referenced in Paragraph 18, above, the OSC found the following technical violations by Respondent at the facility:

a. Presence of a discharge of oil, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

b. No secondary containment provided for loading/unloading operations, in violation of 40 C.F.R. Section 112.7(c).

c. No written procedures for inspections and no record of inspections, in violation of 40 C.F.R. Section 112.7(e).

d. Accumulated oil not removed from diked area, in violation of 40 C.F.R. Section 112.9(b)(1).

e. Accumulated oil not removed from field drainage systems, in violation of 40 C.F.R. Section 112.9(b)(2).

f. No secondary containment provided for aboveground piping, 55-gallon drums, and separation and treating facility installations, in violation of 40 C.F.R. Section 112.9(c)(2).

g. No procedure to confine drainage from undiked areas in a catchment basin or holding pond, in violation of 40 C.F.R. Section 112.9(c)(2).

h. Pooled oil and oil-saturated soil in heater-treater shed indicates that aboveground valves and piping not inspected, in violation of 40 C.F.R. Section 112.9(d)(1).

21. During a telephone conversation between Tom Shanor, Respondent's President, and the OSC on or about June 17, 2005, Mr. Shanor admitted that Respondent did not have an SPCC Plan for the facility.

22. On or about November 29, 2005, EPA contractor Bob Litchford, an authorized inspector for EPA ("Inspector"), conducted an inspection of Respondent's facility to determine compliance with the CWA and its implementing regulations.

23. During the inspection referenced in Paragraph 22, above, the Inspector found that Respondent had failed to prepare and implement an SPCC Plan for the facility, in violation of 40 C.F.R. Sections 112.3, 112.5, 112.7, and 112.9.

24. On or about November 29, 2005, the Inspector found the following deficiencies in Respondent's SPCC Plan, dated August 25, 2005:

a. Does not specify that the SPCC Plan will be amended when there is a change in the design, construction, operation or maintenance of the facility that will materially affect its potential for discharge, in violation of 40 C.F.R. Section 112.5(a).

b. Management approval not signed, in violation of 40 C.F.R. Section 112.7.

c. No complete discussion of the facility's conformance with the requirements listed in Part 112, in violation of 40 C.F.R. Section 112.7(a)(1).

d. No reasons given for nonconformance with the Plan, and no detailed description of alternative methods and how Respondent will

achieve equivalent environmental protection, in violation of 40 C.F.R. Section 112.7(a) (2) .

e. Inadequate facility diagram (i.e., the slop oil tank does not appear on the diagram), in violation of 40 C.F.R. Section 112.7(a) (3) .

f. Inadequate discharge predictions, in violation of 40 C.F.R. Section 112.7(b) .

g. No records of inspections and tests, and no signature by the appropriate supervisor or inspector, in violation of 40 C.F.R. Section 112.7(e) .

h. Inspection records not maintained for three years, in violation of 40 C.F.R. Section 112.7(e) .

i. No provision for brittle fracture or catastrophic failure evaluation when field-constructed containers undergo repair, alteration, reconstruction, or a change in service which might affect the risk of a discharge, in violation of 40 C.F.R. Section 112.7(i) .

j. No procedure to confine drainage from undiked areas in a catchment basin or holding pond, in violation of 40 C.F.R. Section 112.9(c) (2) .

25. During the inspection referenced in Paragraph 22, above, the Inspector found the following technical violations associated with Respondent's failure to adequately implement an SPCC at the facility:

a. No secondary containment for loading/unloading operations, in violation of 40 C.F.R. Section 112.7(c) .

b. No written procedures for inspections and no record of inspections, in violation of 40 C.F.R. Section 112.7(e) .

c. No person accountable for discharge prevention designated, in violation of 40 C.F.R. Section 112.7(f)(2).

d. No discharge prevention briefings conducted for oil-handling personnel, in violation of 40 C.F.R. Section 112.7(f)(3).

e. No secondary containment for aboveground piping, 55-gallon drums, and separation and treating facility installations, in violation of 40 C.F.R. Section 112.9(c)(2).

f. No procedure to confine drainage from undiked areas in a catchment basin or holding pond, in violation of 40 C.F.R. Section 112.9(c)(2).

g. Pooled oil and oil-saturated soil in heater-treater shed indicates that aboveground valves and piping not inspected, in violation of 40 C.F.R. Section 112.9(d)(1).

26. Respondent failed, inter alia, to (i) prepare an SPCC Plan, (ii) prepare an adequate SPCC Plan, and (iii) adequately implement an SPCC Plan, for the facility, in violation of Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and 40 C.F.R. Sections 112.3, 112.5, 112.7, and 112.9.

27. Respondent failed, inter alia, to place secondary containment around (i) loading/unloading operations, in violation of Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and 40 C.F.R. Section 112.7(c); and (ii) aboveground piping, 55-gallon drums, and separation and treating facility installations, in violation of Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and 40 C.F.R. Section 112.9(c)(2).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 311(b) (6) (B) (i) of the CWA, 33 U.S.C. § 1321(b) (6) (B) (i). Section 311(b) (6) (B) (i) and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$11,000 per violation, and a maximum penalty amount of \$32,500 for each violation, of Section 311(b) (6) (A) of the CWA, 33 U.S.C. Section 1321(b) (6) (A), occurring after March 15, 2004. For purposes of determining the amount of any civil penalty to be assessed, Section 311(b) (8) of the CWA, 33 U.S.C. Section 1321 (b) (8), requires EPA to consider, in addition to any other matters as justice may require, the seriousness of the violation(s); the economic benefit to the violator, if any, resulting from the violation; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; and the economic impact of the penalty on the violator.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Civil Penalty Policy for Section 311(b) (3) and Section 311(j) of the Clean Water Act" dated August 1998 ("Penalty Policy"). This policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this

time, Complainant proposes that Respondent be assessed a penalty of **\$22,980** for the violations alleged in this Complaint. Specifically, the proposed penalty amount is based on Respondent's moderate non-compliance due to its failure, inter alia, to: (1) prepare an SPCC Plan; (2) prepare an adequate SPCC Plan; (3) adequately implement an SPCC Plan; (4) place secondary containment around loading/unloading operations; and (5) place secondary containment around aboveground piping, 55-gallon drums, and separation and treating facility installations. Respondent caused a major environmental impact because its oil spill likely had a significant effect on human health, a sensitive ecosystem, and/or wildlife due to factors such as proximity to water or adequacy of containment. Two dead oil-coated birds and two dead oil-coated rodents were recovered from Respondent's facility during the inspection referenced in Paragraph 18, above. Sand Creek, which is located approximately 300 feet north of the facility, flows into Browns Creek, which flows into the Little Laramie River. Respondent's degree of culpability was major because the regulations it violated have been in existence for more than 30 years. EPA regularly offers workshops on compliance with OPA regulations to members of the regulated community in the State of Wyoming. In addition, the State of Wyoming Oil and Gas Conservation Commission posts information on its website to assist the regulated community in complying with the requirements of EPA's Oil Spill Program. Furthermore, Respondent remains in violation of all statutory and regulatory requirements outlined herein. Finally, the civil penalty was increased by one-half of one percent for each of the 15 months

that Respondent has failed to come into compliance. Respondent does not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit. The Penalty Policy is enclosed with this Complaint and incorporated herein.

The Administrative Law Judge is not bound by EPA's Penalty Policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized by statute.

Payment of the penalty may be made by cashier's or certified check, or by electronic funds transfer ("EFT"). If paying by check, Respondent shall submit a cashier's or certified check, payable to the "Environmental Protection Agency", and bearing the notation "OSLTF - 311" and the title and docket number of this case.

If Respondent sends payment by the U.S. Postal Service, the payment shall be mailed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251.

If Respondent sends payment by a private delivery service, the payment shall be mailed to:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001.

If paying by EFT, Respondent shall transfer \$22,980 to:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235.

In the case of an international transfer of funds, Respondent shall use SWIFT address MELNUS3P.

Respondent shall submit copies of the check (or, in the case of an EFT, copies of the EFT confirmation) to the Regional Hearing Clerk and also to Jessie Goldfarb, Senior Enforcement Attorney, at the addresses provided below.

OPPORTUNITY TO REQUEST A HEARING

As provided by Section 311(b) (6) (B) (i) of the CWA, 33 U.S.C. § 1321(b) (6) (B) (i), Respondent has the right to request a hearing on the issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466.

An Answer must be filed within thirty (30) days of receipt of the Complaint. The Answer must clearly and directly admit, deny, or explain each factual allegation of the Complaint with regard to which Respondent has any knowledge. The Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Hearings will be conducted in accordance with the Consolidated Rules of Practice.

If Respondent fails to file an Answer with the Regional Hearing Clerk within thirty (30) days or receipt of the Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i). The proposed penalty shall become due and payable by Respondent, without further proceedings, sixty (60) days after a final order is issued upon default.

QUICK RESOLUTION

Respondent may resolve this proceeding at any time by paying the specific penalty set forth in the Complaint. Such action to make payment need not contain any response to, or admission of, the allegations set forth in the Complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and appeal the final order. See Section 22.18 of the Consolidated Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. To explore the possibility of settlement in this matter, contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6926.

Please note that a request for an informal settlement conference does not extend the thirty-day period for filing a written Answer and requesting a hearing.

27 September 2006
Date

SIGNED

Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

27 September 2006
Date

SIGNED

David J. Janik,
Supervisory Enforcement Attorney
Office of Enforcement, Compliance,
and Environmental Justice

IN THE MATTER OF:

Thorofare Resources, Inc.-
Little Laramie Field,
Parkinson Tank Battery
CWA-08-2006-0047

DOCKET NO.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA-Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail: Return Receipt Requested to:

Craig I. Shanor
Registered Agent
Thorofare Resources, Inc.
123 W. 1st Street, Suite 620
Casper, WY 82601.

9/27/06

Date

SIGNED

Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 27, 2006.